

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

REV. DR. MRS. ELENOA SIKIVOU,

Petitioner,

v.

DEPARTMENT OF HOMELAND  
SECURITY, et al.,

Respondents.

CASE NO. C07-1216-TSZ-MJB

REPORT AND RECOMMENDATION

On July 21, 2006, petitioner Rev. Dr. Mrs. Elenoa Sikivou, proceeding pro se, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 in the United States District Court for the Southern District of New York, challenging her final order of removal to Fiji and her continued detention by the U.S. Immigration and Customs Enforcement (“ICE”). (Dkt. #8, Attach. #3). On July 25, 2007, the New York District Court dismissed the habeas petition to the extent it challenged her final order of removal, and transferred the action to this Court because petitioner was detained at the Northwest Detention Center in Tacoma, Washington. *Id.* On September 5, 2007, petitioner submitted a letter requesting that the Court substitute her petition for a motion under 28 U.S.C. § 2255 to vacate, set aside, or correct her federal sentence. (Dkt. #20). The Court denied petitioner’s request, concluding that a petition under section 2241, not

REPORT AND RECOMMENDATION  
PAGE - 1

1 section 2255, was the appropriate vehicle to challenge her continued detention. (Dkt. #22). On  
2 September 14, 2007, respondents filed a Return Memorandum and Motion to Dismiss,  
3 indicating that on September 12, 2007, ICE released petitioner from detention. (Dkt. #25).  
4 Respondents argue that because petitioner is no longer detained by ICE, petitioner's habeas  
5 petition should be dismissed as moot. *Id.*

6 For a federal court to have jurisdiction, "an actual controversy must exist at all stages of  
7 the litigation." *Biodiversity Legal Foundation v. Badgley*, 309 F.3d 1166, 1173 (9<sup>th</sup> Cir. 2002).  
8 "When a controversy no longer exists, the case is moot." *Id.* Because petitioner is no longer  
9 detained by ICE, the Court finds that petitioner's habeas petition should be dismissed as moot.  
10 *See, e.g., Cooney v. Edwards*, 971 F.2d 345, 346 (9<sup>th</sup> Cir. 1992) (holding that the District Court  
11 properly dismissed plaintiff's claims that had become either moot or unripe). Accordingly, I  
12 recommend that respondents' motion to dismiss be granted, and that this action be dismissed  
13 without prejudice. A proposed Order accompanies this Report and Recommendation.

14 DATED this 17<sup>th</sup> day of September, 2007.

15  
16 

17  
18 MONICA J. BENTON  
19 United States Magistrate Judge  
20  
21  
22  
23  
24  
25  
26